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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
BCIS, AAO, 20 Mass, 3/F
Washington, D.C. 20536

[redacted]

FILE: WAC 02 041 55846 OFFICE: California Service Center DATE: JUN 18 2003

IN RE: Petitioner:
Beneficiary: [redacted]

Petition: Immigrant Petition for Alien Worker as a Skilled Worker or Professional Pursuant to Section 203(b)(3) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(3)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:
This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Bureau of Citizenship and Immigration Services (Bureau) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of $110 as required under 8 C.F.R. § 103.7.

Helen E. Crawford for

Robert P. Wiemann, Director
Administrative Appeals Unit

DISCUSSION: The employment-based preference visa petition was denied by the Director, California Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner is a manufacturer of electronic equipment and supplies. It seeks to employ the beneficiary permanently in the United States as a plater. As required by statute, the petition is accompanied by an individual labor certification, the Application for Alien Employment Certification (Form ETA 750), approved by the Department of Labor.

Section 203(b)(3)(A)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3)(A)(i), provides for the granting of preference classification to qualified immigrants who are capable, at the time of petitioning for classification under this paragraph, of performing skilled labor (requiring at least two years training or experience), not of a temporary or seasonal nature, for which qualified workers are not available in the United States.

8 C.F.R. § 204.5(g)(2) states in pertinent part:

> *Ability of prospective employer to pay wage.* Any petition filed by or for an employment-based immigrant which requires an offer of employment must be accompanied by evidence that the prospective United States employer has the ability to pay the proffered wage. The petitioner must demonstrate this ability at the time the priority date is established and continuing until the beneficiary obtains lawful permanent residence. Evidence of this ability shall be either in the form of copies of annual reports, federal tax returns, or audited financial statements.

Eligibility in this matter hinges on the petitioner's ability to pay the wage offered as of the petition's priority date, which is the date the request for labor certification was accepted for processing by any office within the employment system of the Department of Labor. *Matter of Wing's Tea House*, 16 I&N Dec. 158 (Act. Reg. Comm. 1977). Here, the petition's priority date is October 27, 1997. The beneficiary's salary as stated on the labor certification is $12.85 per hour or $26,728 per annum.

Along with the petition, the petitioner submitted a photocopy of the Form 941, Employer's Quarterly Federal Tax Return, for the first quarter of the year 2001. Also provided was a letter dated April 30, 1998, which was addressed to the California Employment Development Department and signed by both the employer and the beneficiary. The letter indicated that the beneficiary had already been employed by the petitioner as a plater for three years.

On March 13, 2002, the director sent the petitioner a Request for Evidence (RFE), in which the petitioner was requested to provide documentation such as signed federal income tax returns from 1997 to the present. The petitioner was also requested to provide copies of the beneficiary's Wage and Tax Statement (W-2), as well as a work history for the beneficiary indicating his title, duties, experience, dates of employment and number of hours worked per week.

In response to the RFE, the petitioner submitted another copy of the Form 941, but no W-2 or federal income tax return. The petitioner never submitted copies of the beneficiary's W-2 or further work history, both of which had been requested by the director in his RFE. The director determined that the evidence did not establish that the petitioner had the ability to pay the proffered wage at the priority date, and continuing to the present, and denied the petition.

On appeal, counsel submits copies of the petitioner's 1998 Form 1120, U.S. Corporation Income Tax Return. It shows for taxable income a deficit of -$73,926, less than the proffered wage. Schedule L reflects current assets of $855,532 minus current liabilities of $1,029,797, for a deficit of net current assets of -$174,260. The petitioner could not pay a proffered wage of $26,728 a year out of this income.

The petitioner must show that it had the ability to pay the proffered wage with particular reference to the priority date of the petition. In addition, it must demonstrate that financial ability and continuing until the beneficiary obtains lawful permanent residence. *See Matter of Great Wall*, 16 I&N Dec. 142, 145 (Acting Reg. Comm. 1977), *Matter of Wing's Tea House*, 16 I&N Dec. 158 (Act. Reg. Comm. 1977); *Chi-Feng Chang v. Thornburgh*, 719 F.Supp. 532 (N.D. Tex. 1989). The regulations require proof of eligibility at the priority date. 8 C.F.R. § 204.5(g)(2). 8 C.F.R. § 103.2(B)(1) and (12).

Counsel, on appeal, also urges the consideration of unaudited financial statements as proof of the ability to pay the proffered wage. This evidence consists of compilations for the periods ending June 30, 1997, June 30, 1998, December 31, 1999 and March 31, 2001. Such submissions are of little evidentiary value because they are based solely on the representations of management. 8 C.F.R. § 204.5(g)(2), *supra* p. 2. This regulation neither states nor implies that an unaudited document may be submitted in lieu of annual reports, federal tax returns, or audited financial statements.

After a review of federal tax returns, the Form 941 and unaudited statements, it is concluded that the petitioner has not established that it had sufficient available funds to pay the salary offered as

of the priority date of the petition and continuing to the present time.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden.

ORDER: The appeal is dismissed.